

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2932 OF 2003

Fire Equipment (Bombay) Pvt. Ltd.
Proprietor of Fire Equipment Corporation ..Petitioner.
Vs.
Rajaram Bhekare & Ors. ..Respondents.
...
Mr. A.D. Shetty with Ms. Rita Joshi for the Petitioner.
Mr. V.P. Vaidya for the Respondents.
...

CORAM: DR. D.Y. CHANDRACHUD, J.

1st September, 2006.

P.C. :

1. The Petitioner engages in the manufacture of fire-fighting equipment and industrial hoses. The workmen proceeded on a strike on and from 9th October, 1983. The management had employed 25 workmen at the material time. The claim of the workmen was that by a letter dated 4th March, 1986 the union withdrew the strike with effect from 10th March, 1986 despite which the management did not provide work. The workers contended that their services were terminated by an act of oral termination on 10th March, 1986. On a demand being raised by the workmen, a reference was made for adjudication to the Labour Court by the

appropriate government. The reference was in regard to the claim of thirteen workmen for reinstatement with full backwages and continuity of service. The Industrial Court passed its award on 29th May, 1995 and granted reinstatement with full backwages and continuity of service to all the workmen. A writ petition was filed under Article 226 of the Constitution by the management before this Court. The petition was dismissed by an order dated 18th November, 1995 of a Learned Single Judge. On 9th February, 1996 the appeal filed by the management against the dismissal of the petition was admitted by the Division Bench. The operation of the award in so far as it awarded backwages to seven employees came to be stayed on the ground that they had not reported for duty despite the offer of the management.

2. An application under Section 33C(2) of the Industrial Disputes Act, 1947 was filed by twelve workmen claiming backwages from 10th March, 1986 till August 1994. The workmen who had moved the Labour Court included the seven workmen in respect of whom the award of backwages was stayed by the Division Bench in the Letters Patent Appeal. The workmen claimed that they were entitled to wages in accordance with a

notification under the Minimum Wages Act, 1948 applicable to the power loom industry. The management filed its written statement disputing the claim of the workmen. According to the management, the claim of the workmen to receive wages in accordance with the minimum wages prescribed for the power loom industry had been rejected by the Labour Court on 17th February, 1997. The management also relied on the fact that the award of backwages had been stayed in respect of seven workmen. According to the management, it was liable to pay wages only under the residuary entry to the notification under the Minimum Wages Act, 1948.

3. Evidence was adduced before the Labour Court by one workman on behalf of all the claimants and, on behalf of the management by its witness. The Labour Court allowed the application under Section 33C(2) by its order dated 9th July, 2003. The Labour Court declined to allow the claim for wages on the basis of the entry applicable to the power loom industry under the Minimum Wages Act. However, the order of the Labour Court was confined only to the five employees in respect of whom no stay was granted by the Division Bench in the Letters Patent Appeal.

The applications of the remaining seven workmen were dismissed. The Labour Court granted interest at the rate of 12% per annum.

4. When this Petition was admitted on 3rd February, 2004 the order of the Labour Court was stayed subject to the Petitioner depositing the undisputed amount, that is excluding the amount granted on account of (i) interest; and (ii) increments beyond 31st March, 1985. The undisputed amount was permitted to be withdrawn by the workmen. Accordingly an amount of Rs.2,11,359/- was deposited before the Labour Court and has been withdrawn by the five workmen.

5. Counsel for the Petitioner confined the oral submissions to two issues at the stage of final hearing. The first issue relates to the question as to whether the Labour Court transgressed its jurisdiction in granting increments to the five workmen under the terms of the settlement dated 17th December, 1981 in an application under Section 33C(2) and the second issue relates to whether the Labour Court had the jurisdiction to grant interest under Section 33C(2).

6. In so far as the question of increments is concerned, it is undisputed that a settlement was arrived at in conciliation on 17th December, 1981. Now it is a well settled principle of law having regard to the provisions of Sections 18 and 19 of the Industrial Disputes Act, 1947 that a settlement is valid firstly during the term of the settlement, secondly, even after the expiry of the term of the settlement until it is terminated and thirdly, after the termination of the settlement until it is replaced by another settlement or award. This principle is indeed well settled in view of the judgment of the Supreme Court in **LIC v. D. J. Bahadur**¹. There is no dispute about this position. Therefore, it cannot be disputed that even though the settlement was terminated in the year 1997, the settlement would continue to remain in force unless a fresh settlement was negotiated or entered into. A charter of demands is pending. The question to be decided, however, turns on the provision for the grant of increments in the settlement. Clause 1(c) of the settlement provided as follows :

“1. Wages, D.A. and Classification :

c) The workmen shown in Annexure 'C' to this Settlement shall be paid annual increments in their basic wages mentioned against their names as detailed therein. In other words, the D.A. in question shall remain

1 1980 Lab. I.C. 1218 (SC).

constant till the duration of this Settlement.”

Annexure C to the settlement provided for the grant of three annual increments. The first annual increment was from 1st April, 1982 to 31st March, 1983, the second was from 1st April, 1983 to 31st March, 1984, while the third was from 1st April, 1984 to 31st March, 1985. There is merit in the submission which has been urged on behalf of the Petitioner that no running scale of pay was provided in the settlement. In a case where there is a running time scale of pay and an increment is provided within that scale, it can well be argued that the increments must be granted within the time scale so long as the settlement remains in operation and is not superseded. That is not the case here. In the present case, Annexure C provides that there would be three annual increments, the last of them being for 1st April, 1984 to 31st March, 1985. In the face of this, the Labour Court was manifestly in error in allowing increments even thereafter until 1994. Counsel appearing for the workmen attempted to urge that the increments which have been contemplated in Annexure C to the settlement should be granted at the same rate thereafter. Such a construction cannot be placed on the settlement for the simple reason that Annexure C specifically

contemplates that there would be only three increments, the last of them for the period from 1st April, 1984 to 31st March, 1985. Therefore, the order of the Labour Court, particularly in an application under Section 33C(2), granting increments would have to be quashed and set aside. It must be noted that this was not a situation where an adjudication was carried out under Section 10 of the Industrial Disputes Act, 1947. Considering the nature of the jurisdiction of the Labour Court under Section 33C(2), I am of the view that the Court was manifestly in error.

7. The question of interest is now taken up. It is a settled principle of law that the Labour Court under Section 33C(2) acts as an executing Court. The Labour Court is called upon to compute and calculate monetary benefits where there is a preexisting right on the part of the workmen. It is not open to the Labour Court to adjudicate upon something which does not constitute a preexisting right. It is undoubtedly open to the Labour Court to determine a question which is incidental to a preexisting right. In the present case, the award of the Labour Court did not grant any interest to the workmen. Section 33C(2) does not confer power on the Labour Court to grant interest. In these

circumstances, the Labour Court was not justified in granting interest to the workmen. Counsel appearing for the workmen relied upon a judgment of the Supreme Court in **Suresh Sakharam Chaugule v. M/s. Parel Cotton Press Factory Pvt. Ltd.**² where the Supreme Court while setting aside an order of the Labour Court directed the management to pay backwages and bonus as claimed by the workmen together with interest. The judgment of the Supreme Court granting interest must be regarded as a direction in aid of the constitutional power of the Supreme Court under Article 142 of the Constitution for doing complete justice. The Labour Court under Section 33C(2) did not have the power to grant interest, particularly when no interest was awarded in the award of the Labour Court which was set in execution by the application under Section 33C(2).

8. In the circumstances, the Petition shall stand allowed to the extent to which the Labour Court has granted increments and interest on the application under Section 33C(2) to the Fifth Respondent workman. The admitted amount which is due and payable towards backwages has already been deposited before

² AIR 1994 SC 1246.

the Labour Court and has been withdrawn pursuant to the interim order. The Court is informed that the LPA against the order of the Single Judge dated 18th November, 1995, by which the management's Petition against the award of the Industrial Court in the main reference under Section 10 was rejected, has been dismissed in default and an application for restoration has been filed. That amount shall now abide by the result of such final directions as may be passed by the Division Bench in the LPA in the event that the LPA is restored. The Petition is accordingly disposed of in these terms. There shall be no order as to costs.